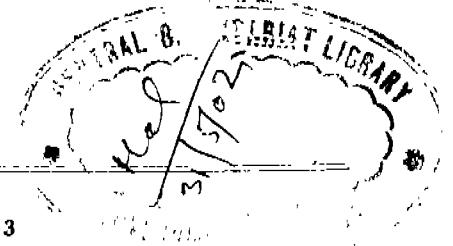




# भारत का राजपत्र The Gazette of India

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सं. 26]

नई दिल्ली, शनिवार, अगस्त 25, 2001/भाद्र 3, 1923

No 26]

NEW DELHI, SATURDAY, AUGUST 25, 2001/BHADRA 3, 1923

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate Paging is given to this Part in order that it may be filed as separate compilation.

भाग II—खण्ड 3—उप-खण्ड (iii)

PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किये गये आदेश और अधिसूचनाएं

Orders and Notifications issued by Central Authorities (other than the Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 13 जुलाई, 2001

आ.अ. 107 —निर्वाचन आयोग 1999 की निर्वाचन याचिका संख्या 7 और 23 दोनों तारीख 22-09-2000 में कर्नाटक उच्च न्यायालय, बंगलूर के आदेश के लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में इसके द्वारा प्रकाशित करता है।

(आदेश अंग्रेजी भाग में छपा है)

[संख्या 82/कर्ना-लो. स./7 और 23/99/2001]

आदेश से,

बाबू राम, सचिव

## ELECTION COMMISSION OF INDIA

New Delhi, the 13th July, 2001

O.N. 107.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the order of the High Court of Karnataka, Bangalore both the dated 22-09-2000 in Election Petition Nos. 7 & 23 of 1999.

## IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated this the 22nd day of September, 2000

BEFORE

THE HON'BLE MR. JUSTICE R.V. RAVEENDRAN

Election Petition Nos. 7 &amp; 23 of 1999

In EP No. 7 of 1999

BETWEEN :

1. U.K. Swamy  
S/o Kadegowda  
Age 49 years  
Uyyamballi Hobli  
Kanakapura Taluk  
Bangalore Rural District

—Petitioner

(By Sri M. Veerabhadraiah &  
Sri M. R. Rajagopal)

AND

1. The Returning Officer/  
Deputy Commissioner No. 11  
Kanakapura Parliamentary  
Constituency Podium Block  
Vishweswarajah Towers  
Vidhana Veedhi  
Bangalore
2. Shri M.V. Chandrashekar Murthy  
S/o M.V. Venkatappa  
Aged 58 years  
Parliamentary Constituency  
R/o Pete Malavalli Town  
Mandya Dist  
Also at:  
M.V. Chandrashekar Murthy  
Member of Parliament

No. 5, Church Road  
Shanti Nagar  
Bangalore

—Respondents

(By Sri H.J. Sundarkumar Aga, For R1;  
Sri Venkateshwar N.K. And

Ms. Madhumita Bagachi, Adv., for For R 2;)

Election Petition is filed under section 81 of The Representation of People Act, 1951, by the petitioner candidate for election constituency as member of parliament for No. 11, Kanakapura Parliamentary Constituency held in August/September 1999 praying as follows :

- (a) Call for records, pertaining to pre-election process i.e., from date of declaration of calender of events, till the date of rejection of nomination of petitioner pertaining to No. 11, Kanakapura Parliamentary Constituency;
- (b) Call for other records relating to granting of copies, certified copies to petitioner, including original file containing the orders, endorsements and notes if any, from the custody of returning officers and
- (c) Declare that rejection of nomination paper of the petitioner is improper and illegal pertaining to No. 11, Kanakapura Parliamentary Constituency and consequently declare the election of second respondent as declared under form No. 21C, as null and void.

E.P. No. 23 of 1999

BETWEEN

1. Shankare Gowda  
S/o Puttaswamy Gowda  
Age : 35 yrs  
R/o Mylanayakana Hosahalli  
Chennapatna Taluk  
Bangalore Rural District

....Petitioner

(by Sri K.N. Subba Reddy, Advocate)

AND :

1. M. V. Chandrashekhara Murthy  
S/o M.V. Venkatappa  
Age 58 yrs  
R/o Petemalavalli  
Mandya, and also No. 5  
Church Road  
Shantinagar, Bangalore-37
2. U.K. Swamy  
S/o Kadegowda  
Age : 49 yrs  
R/o Uyyamballi Village  
Alahalli post  
Kanakapura Taluk  
Bangalore Rural District

3. H.D. Kumaraswamy  
S/o H.D. Devegowda  
Age : 38 yrs  
R/o No. 286, Mini Forest Road  
2nd Main, J.P. Nagar  
III Phase, Bangalore
4. M. Srinivas  
S/o. Muniswamappa  
Age : 58 yrs,  
R/o No. 8, 4th cross, 7th Block  
Jayanagar, Bangalore
5. Brahmananda  
S/o U. Nagaiah  
Age 32 yrs  
R/o No. 158, Koramangala Village  
Bangalore-95
6. Veerappa  
S/o Guddathimmaiah  
Age 55 yrs R/o No. 13  
Kallipalya, Maligondanahalli Dhakale  
Uduru Hobli, Magadi Taluk  
Bangalore Rural District
7. The Returning Officer &  
Deputy Commissioner,  
Bangalore Rural To No. 11  
Kanakapura Lok Sabha Constituency  
Podium Block  
Bangalore

## .... Respondents

(By Sri Venkateshwar N K &  
Ms. Madhumita Bagachi Adv., for R1;  
Sri M. Veerabharaiah, and  
Sri M.R. Rajagopal, Adv., for R2;  
Sri D.L. Jagadeesh, Adv., for R3;  
Sri H.J. Sundarkumar Aga, For R7  
R4 to R6 served and unrepresented)

Election Petition filed on 20-11-1999 under sections 80 and 81 of the representation of people Act, 1951 by the petitioner through his Advocate Sri K.N. Subba Reddy, praying as follows :

- (a) To call for records pertaining to the Election process i.e., from the date of declaration of calendar of events till the date of rejection of nomination of respondent No. 2 pertaining to No. 11, Kanakapura Parliamentary constituency Kanakapura, Bangalore rural District State of Karnataka;
- (b) To call for other records including original file containing the orders, endorsements, Notices, B-forms, nomination paper of respondent no. 2, if any in the custody of the returning officer for the said constituency; and

(c) Declare that the rejection of nomination of respondent No. 2 pertaining to the said constituency as improper and illegal and consequently declare that the election of First respondent as returned candidate to the said constituency as null and void.

These Election Petitions, having been heard and reserved for orders on 15-9-2000, coming on for pronouncement of order on this day, the Court made the following :

## ORDER

These election petitions challenge the Declaration of the result of election of Sri M. V. Chandrashekara Murthy to the House of the People, as member representing No. 11, Kanakapura Parliamentary Constituency, in the elections held in August-September, 1999, (vide Declaration dated 6-10-1999 in Form No. 21C). Election Petition 7 of 1999 is filed by Sri U. K. Swamy, whose nomination paper was rejected by the Returning Officer and Election Petition No. 23 of 1999 is filed by a voter in Kanakapura Parliamentary Constituency. In this order the following abbreviations are also used : 'RP Act' for 'Representation of the People Act, 1951'; 'Rules' for 'Conduct of Election Rules, 1961'; 'Symbol Order' for 'The Election Symbols (Reservation and Allotment) Order, 1968'; 'INC' for 'Indian Congress'; and 'JD(s)' for 'Janata Dal (Secular)'.

2. By Notification dated 11-8-1999, the President of India called upon the Parliamentary Constituencies in various States, including the Kanakapura Parliamentary Constituency to elect members in accordance with the provisions of Representation of the People Act, 1951 [for short the 'RP Act']. In pursuance of it, Election Commission of India issued a notification dated 11-8-1999 under Sections 30 and 56 of the RP Act appointing various dates for making nominations, scrutiny of nominations, withdrawal of candidatures, polling and completion of elections. As per the said Notification, the schedule for the said election was as follows :

(a) Last date for filing nominations	18-8-1999
(b) Date of scrutiny of nominations	19-8-1999
(c) Last date for withdrawal of nominations	21-8-1999
(d) Date of Poll	05-9-1999

3. Five nomination papers were received by the Returning Officer on 16-8-1999, out of which, first two related to Sri M. Srinivas [candidate of Bharatiya Janata Party], third related to Sri N. Brahmananda [independent] and the last two relate to Sri Veerappa [independent]. Another six nomination papers were received on 18-8-1999, of which, first four related to Sri M V Chandrashekara Murthy

[candidate of Indian National Congress] and the other two related to Sri H. D. Kumaraswamy and Sri U. K. Swamy both belonging to Janata Dal (Secular party).

4. The Nominations paper in Form 2(a) consists of five parts. Part I is to be signed by a single proposer and to be used where the candidate is set up by a recognised political party; Part-II is to be used where the candidate is not set up by a recognised political Party, in which event, the proposers should be 10 in number. Part-III contains the declaration to be made by the candidate; Part-IV contains the endorsement to be made by the Returning Officer, noting the time and date of receipt of the nomination paper at his office; and Part-V relates to the decision to be recorded by the Returning Officer either accepting or rejecting the nomination paper.

5. The nomination of U. K. Swamy in the Nomination paper dated 18-8-1999 was made in Part-I with one proposer and not in Part-II which requires 10 proposers. In Part-III of the nomination paper, U. K. Swamy declared that he had been set up by Janata Dal (Secular), a recognised national party and requested that the symbol reserved for the said party [Kisan Driven Tractor] be allotted to him. It is claimed, by U. K. Swamy that the Nomination paper was accompanied by Forms A and B under the Election Symbols (Reservation and Allotment) Order 1968. Form B was a notice by his political party that H. D. Kumaraswamy was the approved candidate and U. K. Swamy was its substitute candidate who will step in, on the approved candidate's nomination being rejected on scrutiny, or on his withdrawing from the contest, if the substitute candidate is still a contesting candidate. Form 'A' was the communication containing the name and specimen signature of the person authorised by the party who could send a notice in Form B.

6. The nomination papers received were taken up for scrutiny on 19-8-1999. On such scrutiny, the nomination of five other candidates including H. D. Kumaraswamy, the approved candidate of Janata Dal (Secular) party was accepted. As a consequence, the nomination paper of U. K. Swamy was rejected by the Returning Officer, by making the following endorsement on his nomination paper :

"I have examined this nomination paper in accordance with Section 36 of the Representation of the People Act, 1951 and decide as follows :

Since the nomination of Sri H. D. Kumaraswamy, indicated as main candidate set up by Janata Dal (Secular) is accepted, the nomination of Sri U. K. Swamy, set up as substitute candidate by the party is liable to be rejected in view of the clarification contained in clause (vii) of para 10.3 of Chapter VI of Hand Book for Returning Officer (1998).

Hence, the nomination of Sri U. K. Swamy is hereby rejected. Detailed order will be issued separately."

7. A list of validly nominated candidates (in Form No. 4) was declared by the Returning Officer on 19-8-1999, showing the following candidates :

- |    |                             |               |
|----|-----------------------------|---------------|
| 1. | H. D. Kumaraswamy           | — JD (S)      |
| 2. | M. V. Chandrashekara-murthy | — INC         |
| 3. | M. Srinivas                 | — BJP         |
| 4. | N. Brahmananda              | — Independent |
| 5. | Veerappa                    | — Independent |

The Returning Officer also passed a reasoned order (No. ELN 16/1999-2000) dated 19-8-1999, wherein he considered the two contentions urged the Advocate for U. K. Swamy, who appeared before him : (i) that the nomination of U. K. Swamy should be accepted; and (ii) in the alternative the scrutiny of his nomination should be postponed till the expiry of the time stipulated for withdrawal of candidatures. He rejected the contentions and rejected the nomination paper of U. K. Swamy as a candidate set up by JD (S). Feeling aggrieved by the rejection of his nomination paper, U. K. Swamy filed a Review Petition dated 21-8-1999 [termed as Revision Petition] before the Returning Officer to review of the said order dated 19-8-1999 and accept his nomination and allow him to contest the election as the official substitute candidate of JD (S). After hearing, the Returning Officer, by order dated 21-8-1999, rejected the said petition of U. K. Swamy on the ground that a application was not maintainable.

8. Thereafter, polls were held on 5-9-1999 and Form No. 20 [Consolidated Result Sheet] and Form No. 21(e), dated 6-10-1999 [Return of election] were issued which disclose the number of votes secured by each of the five candidates as follows :

Sl. No.	Name of the candidate	Name of political party	No. of votes polled
1.	H. D. Kumaraswamy	JD (S)	1,62,465
2.	M. V. Chandrashekara Murthy	INC	5,33,652
3.	M. Srinivas	BJP	4,99,101
4.	N. Brahmananda	(IND)	6,253
5.	Veerappa	(IND)	33,327

In view of the above, the Returning Officer declared M. V. Chandrashekar Murthy as duly elected to fill the Kanakapura Parliamentary Constituency seat. Accordingly, a Declaration of result of election [in Form 21C] was also issued on 6-10-1999 by the

Returning Officer, declaring Sri M. V. Chandrashekar Murthy as the elected candidate from No. 11-Kanakapura Parliamentary Constituency.

9. It is stated that the validity of rejection of nomination paper of U. K. Swamy was challenged in WP No. 30120 of 1999 and the said writ petition was disposed of, reserving liberty to file an election petition, as provided under the law; that subsequently an attempt was made before the Election Commission by filing a petition under Article 324 of the Constitution of India, which also became futile.

10. Feeling aggrieved, U. K. Swamy, whose nomination paper was rejected has filed Election Petition No. 7 of 1999, for a declaration that the rejection of his nomination papers is improper and illegal and for a consequential declaration that the election of second respondent (M. V. Chandrashekar Murthy) as declared under Form No. 21C as null and void. The Returning Officer is impleaded as respondent No. 1 and the elected candidate (M. V. Chandrashekar Murthy) as impleaded as respondent No. 2.

11. One Shankara Gowda, one of the voters of Kanakapura Parliamentary Constituency, has filed Election Petition No. 23 of 1999 for the very same relief. He has sought a declaration that rejection of nomination paper of U. K. Swamy, pertaining to 11-Kanakapura Parliamentary Constituency is improper and illegal and consequently, to declare that the election of M. V. Chandrashekar Murthy as the returned candidate under Form 21C as null and void. In the said petition, M. V. Chandrashekar Murthy is impleaded as respondent No. 1, U. K. Swamy is impleaded as respondent No. 2, the other four candidates are impleaded as respondents 3 to 6 and the Returning Officer is impleaded as respondent No. 7.

12. Petitioner in E.P. No. 7/1999 has the following grounds in support of their election petitions :

12.1 Form B under the Election Symbols (Reservation & Allotment) Order, 1968, as it originally stood, read with Clause 13 of the said Order, enabled a substitute candidate to step-in, only on the rejection of the nomination of the approved candidate; consequently when nomination paper of the main candidate was accepted, the nomination paper of the substitute candidate could be rejected. But, the Symbol Order was amended by Election Commission Notification dated 20-5-1999, inserting Clause 13A and modifying Form-B. After the amendment, that is as per the modified Form-B, the substitute candidate will step-in, either on the rejection of the nomination of the approved candidate on scrutiny, or on the withdrawal of the approved candidate from the contest. It is contended that in view of the said amendment to Form-B, the nomination paper of the substitute candidate cannot be rejected until the

expiry of the time stipulated for withdrawals. As the amended Form-B contemplates the substitute candidate stepping in as the approved candidate, on the withdrawal by the approved candidate, and as the approved candidate had time till 3 P.M. on 21-8-1999 to withdraw his candidature, the substitute candidate's (U. K. Swamy's) nomination paper should not have been scrutinised and rejected on 19-8-1999, itself, but ought to have been kept pending till 3.00 P.M. 21-8-1999, and taken up for scrutiny only thereafter.

12.2 It is alleged by U.K. Swamy that as per the initial arrangement within the Party [Janata Dal-S], H. D. Kumaraswamy was to be the main candidate for Kanakapura Parliamentary Constituency and U. K. Swamy was to be candidate for Sathanur Assembly Constituency; that subsequently i.e. after filing of nomination papers of H.D. Kumaraswamy and U. K. Swamy, for the Kanakapura Parliamentary Constituency, H. D. Kumaraswamy filed his nomination papers to contest from Sathanur Assembly Constituency; that H. D. Kumaraswamy expressed his unwillingness to remain as a candidate for the vast Kanakapura Parliamentary Constituency; and therefore, it was decided that U. K. Swamy shall remain as candidate for Kanakapura Parliamentary Constituency and H. D. Kumaraswamy will concentrate for the assembly constituency; but in view of the rejection of nomination paper of U. K. Swamy by the Returning Officer, it became necessary for H. D. Kumaraswamy to remain as a candidate for the Kanakapura Parliamentary Constituency and also for Sathanur Assembly Constituency; and that as a result H. D. Kumaraswamy could not concentrate fully, on either of the constituencies, and consequently JD (S) lost both the Parliamentary and Assembly Constituencies to Indian National Congress; and that but for the improper rejection of nomination paper of U. K. Swamy, H. D. Kumaraswamy would have withdrawn from the contest for Kanakapura Parliamentary Constituency and U. K. Swamy would have remained as the JD(S) candidate for Kanakapura Parliamentary Constituency; and in that event, H. D. Kumaraswamy would have concentrated on Sathanur Assembly Constituency and U. K. Swamy would have concentrated on the Kanakapura Parliamentary Constituency, with better prospects and possibilities for U. K. Swamy and H. D. Kumaraswamy to win the elections from Kanakapura Parliamentary Constituency and Sathanur Assembly Constituency respectively.

12.3 The Returning Officer committed serious infractions in rejecting the nomination paper of U. K. Swamy and the reasons assigned by the Returning Officer to reject the nomination paper is beyond what is provided in law.

13. Similar contentions are urged in Ep No. 23 of 1999. An additional contention is raised to the effect that the nomination of a substitute candidate, belonging to a recognised political party, comprising of a single proposer which was valid when filed on 18-8-1999, can not become invalid on 19-8-1999 and therefore the nomination could not have been rejected having regard to the provisions of the R.P. Act.

14. The petitions are resisted by the Returning Officer. At the outset, he has stated that he is not a necessary party to the proceedings. He has also contended that he scrutinised the nomination paper of H. D. Kumaraswamy, who is the approved (main) candidate of JD(S) and found it in order and therefore accepted it; that as the nomination paper of H.D. Kumaraswamy was accepted as JD(S) candidate, the nomination paper of U. K. Swamy, who was the substitute candidate of JD(S) with a single proposer, had to be rejected on the day of scrutiny itself, having regard to the provisions of Section 36 of the RP Act and the procedure laid down by the Election Commission of India in the Hand Book for Returning Officers. It is contended that the Returning Officer is required to prepare a list of validly nominated candidates under Section 36(8) of R.P. Act immediately after nomination papers are scrutinised and decisions accepting or rejecting the same have been recorded; and immediately thereafter he is required to allot symbols to the candidates, whose nomination papers have been accepted on the date of scrutiny; that the statute required him to scrutinise all nomination papers on the date specified for scrutiny and he had no power to keep the nomination paper of any candidate, including that of a substitute candidate, pending without scrutiny, till the date of withdrawal; and that if he had not rejected the nomination paper of U. K. Swamy substitute candidate on 19-8-1999 and if H. D. Kumaraswamy did not withdraw, he had to allot the same symbol to both of them as both H. D. Kumaraswamy and U. K. Swamy nominated by the same party, and that was neither possible nor permissible.

15. The returning candidate has also filed objections. He has contended that the Returning Officer had acted in accordance with the provisions of the Act and the Rules, in rejecting the nomination papers of U. K. Swamy; that when the nomination papers of the approved main candidate was accepted on scrutiny, there was no alternative but to reject the nomination paper of the substitute candidate; that if U. K. Swamy wanted to remain in the field, even after the nomination paper of main candidate was accepted on scrutiny, then another nomination paper subscribed by ten electors, as proposers, ought to have been filed, in which event, such nomination

would have been treated as nomination of an independent candidate; and that as only one proposer had subscribed the nomination of U. K. Swamy, as a JD(S) candidate, and as admittedly he was only a substitute candidate as per Form-B issued by the JD(S) Party, his nomination had to be rejected on the approval of the nomination of the approved main candidate.

16. On the above said pleadings, the following issues were framed in EP No. 7 of 1999 :

- "1. Whether the rejection of the nomination of the petitioner (in regard to Kanakapura Parliamentary Constituency) is incorrect and invalid?
2. Whether having regard to the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (as amended by notification dated 20-5-1999), the Returning Officer could reject the nomination of a substitute candidate only after expiry of the time provided for withdrawal?
3. Whether the first respondent (Returning Officer) is a necessary party?
4. Whether the election of second respondent is illegal and vitiated by the rejection of the nomination of petitioner."

In EP 23 of 1999, the following issues were framed :

- "1. Whether the rejection of the nomination of the second respondent (in regard to Kanakapura Parliamentary Constituency) is incorrect and invalid?
2. Whether having regard to the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (as amended by notification dated 20-5-1999), the Returning Officer could reject the nomination of a substitute candidate only after expiry of the time provided for withdrawal?
3. Whether the seventh respondent (Returning Officer) is a necessary party?
4. Whether the election of first respondent is illegal and invalid

#### ADDITIONAL ISSUE

5. Whether the nomination of a substitute candidate belonging to recognised political party comprising of a single proposal can be rejected having regard to the Representation of Peoples Act?"

Issues 1 to 4 in both the petitions are common.

RE : ISSUE (1) & (2) in both cases :

17. Answers to these two issues depend upon the legal question as to whether the Returning Offi-

cer should scrutinise and decide whether the nomination paper of a substitute candidate should be accepted or rejected on the date of scrutiny, or whether he should postpone the scrutiny of Nomination paper of the substitute candidate, and decide whether it should be accepted or rejected only after the expiry of the time stipulated for withdrawal of candidatures. The answer to this question will necessarily depend on the provisions of the RP Act. Thus these two issues relate to a pure question of law.

18. A reference to the relevant provisions of the RP Act, the Rules, and Symbol order will be useful at this juncture.

18.1 Party-V of the R P Act deals with Conduct of Elections. Chapter-I of Part-V deals with the Nomination of Candidates.

18.2 Section 30 relates to appointment of dates for Nominations, scrutiny etc., It provides that as soon as the Notification calling upon a constituency to elect a member is issued, the Election Commission shall, by notification in the official gazette, appoint (a) the last date for making nominations, (b) the date of scrutiny of nominations, (c) the last date for withdrawal of candidatures, (d) the date or dates on which a poll shall be taken and (e) the date before which the election shall be completed. Clause (b) provides that the date appointed for scrutiny of nomination shall be the day immediately following the last date for making nominations (or if that day is a public holiday, the next succeeding day which is not a public holiday). Clause (c) provides that the last date for withdrawal of candidatures shall be the second day after the day of scrutiny of nominations (or if that day is a public holiday, the next succeeding day, which is not a holiday).

18.3 Section 33 deals with presentation of nomination papers and requirements of a valid nomination. Sub-section (1) with first two provisos, and sub-section (6) with its proviso, are extracted below :

“33. Presentation of nomination paper and requirements for a valid nomination.—(1) On or before the date appointed under clause (a) of section 30 each candidate shall, either in person or by his proposer, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon delivery to the returning officer at the place specified in this behalf in the notice issued under Section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer.

Provided that a candidate not setup by a recognised political party, shall not be deemed duly nominated for election from a constituency

unless the nomination paper is subscribed by ten proposers being electors of the constituency;

Provided further that no nomination paper shall be delivered to the returning officer on a day which is a public holiday.

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—(6) Nothing in this section shall prevent any candidate from being nominated by more than one nomination paper;

Provided that not more than four nomination papers shall be presented by or on behalf of any candidate or accepted by the returning officer for election in the same constituency.

18.4 Section 34 deals with deposit and Section 35 provides for notice of nomination and the time and place for their scrutiny.

18.5 Section 36 deals with scrutiny of nominations. Sub-sections (2), (3), (4), (5), (6) and (8) of Section 36, which are relevant are extracted below :

### 36. Scrutiny of nominations

“(1) xxx xxx xxx

(2) The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds :—

(a) that on the date fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely :— Articles 84, 102, 173, and 191 and Part II of this Act, and sections 4 and 14 of the Government of Union Territories Act, 1963 ; or

(b) that there has been a failure to comply with any of the provisions of section 33 or section 34 ; or

(c) that the signature of the candidate or the proposer on the nomination paper is not genuine.

(3) Nothing contained in clause (b) or clause (c) of sub-section (2) shall be deemed to authorise the rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

(4) The returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

(5) The returning officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of section 30 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control :

Provided that in case an objection is raised by the returning officer or is made by any other person the candidate concerned may be allowed time to rebut in not later than the next day but one following the date fixed for scrutiny, and the returning officer shall record his decision on the date to which the proceedings have been adjourned.

(6) The returning officer shall endorse on each nomination paper his decision accepting or rejecting the same, and if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.

(7) xxx                      xxx                      xxx

(8) Immediately after all the nomination papers have been scrutinized and decision accepting or rejecting the same have been recorded, the returning officer shall prepare a list of validity nominated candidates, that is to say, candidates whose nominations have been found valid, and affix it to his notice board."

(18.6) Section 37 relates to withdrawal of candidature and provides that any candidate may withdraw his candidature by a notice in writing to be delivered before 3.00 PM on the day fixed under Section 30 (c), to the Returning Officer. Section 38 relates to publication of list of contesting candidates. It requires the Returning Officer to prepare and publish a list of candidates who were included in the list of validity nominated candidates and who have not withdrawn their candidature. It requires the Returning Officer to do so immediately after the expiry of the period prescribed for withdrawal of candidatures under Section 37 (1).

19. Rules 4, 8 and 10 of the Rules prescribe the forms for nomination, list of validity nominated candidates and list of contesting candidates. Rule 5 (1) provide that the Election Commission shall, by notification specify the symbols that may be chosen by candidates at elections in Parliamentary constituencies and the restrictions to which their choice shall be subject.

20. Election Symbols (Reservation and Allotment) Order, 1968 was issued by the Election Commission of India, in exercise of its power under Article 324 of the Constitution read with Section 29 A of the RP Act and the Rules 5 and 10 of the Rules. Clause 8 provides that the candidates set up by a recognised national party at any election in any constituency in India, shall choose, and shall be allotted, the symbol reserved for that party and no other symbol.

(20.1) Clause 13 explains when a candidate is deemed to be set up by a recognised national political party. The said clause, as it earlier stood and as it now stands after amendments on 20-5-1999 and 8-6-1999 read as follows :

Before the Amendment on 20-5-1999	After Amendment on 20-5-1999
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13. When a candidate shall be deemed to be set up by a political party : For the purpose of this order, a candidate shall be deemed to be set up by a political party if, and only if :	13. When a candidate shall be deemed to be set up by a political party : For the purpose of an election from any Parliamentary or Assembly constituency to which this Order applies, a candidate shall be deemed to be set up by a political party in any such Parliamentary or Assembly constituency, if, and only if.
--	--

(a) the candidate has made a declaration to this effect in his nomination paper ;	(a) the candidate has made the prescribed declaration to this effect in his nomination paper ;
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(b) a notice in writing, in Form B to that effect has, not later than 3 p.m. on the last date for making nominations been delivered to the Returning Officer of the constituency and the Chief Electoral Officer of the State ;	(b) a notice by the political party in writing, in Form B, to that effect has, not later than 3 p.m. on the last date for making nominations, been delivered to the Returning Officer of the constituency ;
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(c) the said notice is signed by the President, the Secretary or any other office bearer of the party and the President, Secretary or such other office	(c) the said notice in Form B is signed by the President, the Secretary or any other office bearer of the party, and the President-Secretary or such
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bearer is authorised by the party to send such notice ;

other office bearer sending the notice has been authorised by the party to send such notice ;

ensuing General election from the constituency noted against each.

(i) that the person whose particulars and furnished in columns (2) to (4) below is the approved candidate of the party above named, and

(d) the name and specimen signature of such authorised person are communicated to the Returning Officer of the constituency and to the Chief Electoral Officer of the State, in Form A not later than 3 p.m. on the last date for making nominations; and

(d) the name and specimen signature of such authorised person are communicated by the party, in Form A, to the Returning Officer of the constituency and to the Chief Electoral Officer of the State or Union Territory concerned, not later than 3 p.m. on the last date for making nominations ; and

(ii) the person whose particulars are mentioned in columns (5) to (7) below is the substitute candidate of the party, who will step-in on the approved candidate's nomination being rejected on scrutiny or on his withdrawing from the contest, if the substitute candidate is still a contesting candidate, at the ensuing general/bye election from this constituency:

(e) Forms A and B are signed, in ink only, by the said office bearer authorised by the party ;

(e) Forms A and B are signed, in ink only, by the said office bearer or person authorised by the party ;

Provided that no facsimile signature or signature by means of rubber stamp, etc., of any such office bearer shall be accepted and no form transmitted by fax shall be accepted.

Provided that no facimile signature or signature by means of rubber stamp etc., of any such office bearer or authorised person shall be accepted and no form transmitted by fax shall be accepted

It (form B) requires the person authorised by a political party to deliver the form B to the Returning Officer of the Constituency, not later than 3 PM on the last date for making the nomination. The Table in the form was also modified by notification dated 20-5-1999. The contents of Form B before amendment and after amendment are as under.

20.(1) Clause 13A was introduced by Amendment on 20-5-1999 and it clarifies that a political party which has give a notice in Form B under clause 13 in favour of a candidate, may rescind that notice and give a revised notice in Form B in favour of another candidate for the constituency. Form-B prescribes the form of notice as to name of candidate set up by the political party. The format of the notice before and after the amendment is as follows :

Before Amendment : After Amendment on 20-5-1999

In pursuance of paragraph 13 (b) of the Election Symbols (Reservation and Allotment) Order, 1968, I hereby give notice that the following persons have been set up by ..... party as its candidates at the

In pursuance of paragraphs 13 (b), (c) and (e) and 13A of the Election symbols (Reservation and Allotment) Order, 1968, I hereby give notice on behalf of ..... (party) —

Before Amendment

After Amendment from 20-5-1999

(1) Name of the constituency

(1) Name of the constituency

(2) Name of the approved candidate

(2) Name of the approved candidate

(3) Father's/husband's name of approved candidate

(3) Father's/Mother's/husband's name of approved candidate

(4) Postal address of approved candidate

(4) Postal address of approved candidate

(5) Name of the substitute candidate who will step-in on the approved candidate's nomination being rejected on scrutiny

(5) Name of the substitute candidate who will step-in on the approved candidate's nomination being rejected on scrutiny or on his withdrawing from the contest if substitute candidate is still a contesting candidate

(6) Father/husband's name of substitute candidate (6) Father/Mother/husband's name of substitute candidate

(7) Postal address of the substitute candidate. (7) Postal address of the substitute candidate.

21. Petitioners in these two petitions contend that the amendment of the Form-B by introducing the words 'or on his withdrawing from the contest' after the words 'substitute candidate who will step in on the approved candidate's nomination being rejected' would mean that the substitute candidate can step in not only when the approved candidate's nomination is rejected on scrutiny, but also on his withdrawing from the contest; that Section 30(C) read with 37 of RP Act provides for withdrawal of the candidature before 3 PM of the second day after the date of scrutiny of nominations and, therefore, it follows that, the nomination of the substitute candidate shall be kept alive until expiry of the time stipulated for withdrawal of candidatures; and that as the approved candidate in this case (Sri H. D. Kumaraswamy) could have withdrawn at any time before 3 pm on 21-8-1999, the scrutiny of the nomination paper of U K Swamy (Substitute candidate) for acceptance or rejection ought to have been taken up for consideration only after 3 pm on 21-8-1999. It is further contended that a substitute candidate is not like any other normal candidate; that so long as the approved candidate is in the arena, the substitute candidate is only a dormant appendage to the approved candidate and his candidature comes to life only when the nomination paper of the approved candidate is rejected on scrutiny or when the approved candidate withdraws from contest; that therefore the nomination paper of the substitute candidate should not be taken up for scrutiny, so long as the approved candidate holds the field; and that consequently the nomination paper of the substituted candidate can be taken up for scrutiny only when the time stipulated for withdrawal of the nomination papers expires. It is stated that if the substitute candidate's nomination paper is rejected, even before the expiry of the time prescribed for withdrawal of candidatures, the provision made in the amended Form-B that the substitute candidate shall step in as the main candidate, on the withdrawal of the approved candidate from contest, will be rendered nugatory. It is contended that when the provisions of the Symbol Order and modified Form-B, are read with the provision for nomination of candidates in Chapter-I Part-V of the RP Act, it will be clear that the Returning Officer will have to scrutinise the nomination paper of a substitute candidate only after the expiry of the time prescribed for withdrawal of the candidature. It is stated that the instructions in para 10.3 (vii) of the Hand book for returning officers 1998, issued by the Election Commission instructing that the nomination paper of a

substitute candidate should be rejected if the nomination paper of main approved candidate is accepted; was given with reference to the position prior to the amendments to the symbol order made on 20-5-1999 and the said instruction will not apply after 20-5-1999. The petitioners therefore, submit that the nomination paper of the substitute candidate (U.K. Swamy) should been taken up for scrutiny only after 3 p.m. on 21-8-1999; and if the scrutiny had been so postponed from 19-8-1999 to 21-8-1999, the approved candidate (H.D. Kumaraswamy) would have withdrawn and U.K. Swamy would have become the approved candidate.

22. The purpose of scrutiny of nomination papers is to accept the valid nomination papers and reject the invalid nominations. Section 36(5) of RP Act requires scrutiny of all nomination papers without exception, on the date appointed for scrutiny. It, therefore, follows that on the date fixed for scrutiny of nominations, the Returning Officer is bound to scrutinise the nomination papers of all candidates, and wherever they are in order, accept the same and wherever they are not in order, reject the same. No exception is made in regard to substitute candidates or any other category of candidates. Section 33 makes it clear that a nomination paper, to be valid, should be subscribed by ten proposers (electors of the constituency) unless the candidate is set up by a recognised political party, in which event, it is sufficient if the nomination paper is subscribed only one Elector of the constituency, as proposer.

23. There is no difference between the substitute candidate and the approved candidate in so far as filing of nomination is concerned. Section 36(2) requires the Returning Officer to scrutinise all nomination papers on the date appointed for scrutiny and reject those nomination papers which fail to comply with the provisions of Section 33 of the RP Act. As noticed above, Section 33 requires subscription by ten proposers in the case of a candidate not set up by a recognised political party and one proposer in the case of a candidate set up by a recognised political party. Each political party can set up only one approved candidate per constituency and under the Symbol order, such candidate is entitled to the allotment of the symbol of the party. It follows that on the date of scrutiny of nomination papers, only one candidate can be accepted as set up by a recognised political party. To avoid any dispute, as to who is the candidate set up by a political party, the Symbol Order requires the political party to issue Form-B confirming that a particular candidate is the candidate set up by it, not later than 3 pm on the last date for making nomination papers. As some political parties found the need to have a substitute candidate, a provisions was made in Form-B to specify the name and address of the substitute candidate to step in

the place of approved candidate in the event of nomination of the approved candidate being rejected. Subsequently, the political parties found that even this was not a sufficient safeguard to ensure its candidates stays in the fray, as it was likely that the approved candidate may withdraw and therefore, a further provision was made that the substitute candidate will step in not only where the nomination of its approved candidate is rejected, but also where its approved candidate withdraws from the contest.

24. But, the fact that Symbol order enables political parties to have a substitute candidate and also enables such substituted candidate to step in as the approved main candidate (in the event of the nomination of approved candidate being rejected or in the event of approved candidate withdrawing from contest) does not mean that the provisions of the Symbol order are contrary to the provisions of RP Act or will prevail over provisions of the RP Act. The concessions shown to political parties under Symbol order are subject to the provisions of the RP Act and the Rules. The scheme of Chapter-I of Part-V of RP Act remains unchanged. It contemplates and in fact requires the Returning Officer to scrutinise all nomination papers on the day appointed for scrutiny and reject invalid nominations on the date of scrutiny. The provisions of chapter I of Part V of RP Act have not been amended postponing the scrutiny of the nomination paper of a substituted candidate to a time and date beyond the time and date appointed for scrutiny. When the Act specifically contemplates and provides for a scrutiny and acceptance/rejection of nomination paper, on a particular date, such scrutiny cannot, obviously, be postponed to some other day. If the contention of the petitioner is to be accepted, the scrutiny in so far as the substitute candidate is concerned, will have to be postponed to a day and time after the expiry of the time fixed for withdrawals, which would be violation of Sections 30 and 36 of the RP Act.

25. Let me now consider the contention that unless the scrutiny of nomination paper of substitute candidate is postponed till the expiry of the time and date appointed for withdrawal of candidatures, the amendment to Form-B under the Symbol Order will be rendered nugatory. It is contended that while the Symbol Order and Form-B contemplate the substitute candidate stepping in as the approved main candidate, in the event of the approved candidates withdrawing from the contest, rejection of the nomination paper of the substitute candidate even before the time stipulated for withdrawal of candidature, would nullify the amendment to Form-B. This contention is without merit. Earlier, the Symbol Order and Form-B contemplated the substitute candidate stepping in as the approved main candidate only when the nomination paper of the approved

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candidate was rejected on scrutiny. All that the amendment has provided is that the substitute candidate will step in not only when the approved candidate's nomination paper is rejected on scrutiny, but also when the approved candidate withdraws from the contest. Having regard to the provisions of Chapter-I of Part-V of the RP Act, which have remained unaltered, if the substituted candidate should become approved candidate, necessarily, the approved main candidate should withdraw before the scrutiny of the nomination paper of substituted candidate, on the date of appointed for scrutiny. In other words, the substitute candidate will step in as the main candidate where (a) on scrutiny, the nomination paper of the approved candidate is rejected or (b) where before the substitute candidate's nomination paper is scrutinised on the date appointed for scrutiny, the approved candidate withdraws his candidature. This is evident from the use of words 'if substitute candidate is still a contesting candidate' introduced in Form-B, after the words the person whose particulars are mentioned in columns (5) to (7) below is the substitute candidate of the party, who will step in on the approved candidate's nomination being rejected on scrutiny or on his withdrawing from the contest'.

26. Neither the Symbol Order nor Form-B unconditionally provide that whenever the approved candidate withdraws, the substitute candidate will step in. Only if the withdrawal of the candidature of the approved candidate is before the scrutiny and rejection of the nomination paper of substitute candidate, the substitute candidate will step in as the approved main candidate. If the approved candidate does not withdraw before the scrutiny of nomination paper of substitute candidate and the approved candidate's nomination paper is accepted, the substitute candidate's nomination paper will be rejected on the date of scrutiny, and any subsequent withdrawal by the approved candidate will not enable the substitute candidate to step-in in the place of approved candidate. That is why the words "if the substitute candidate is still a contesting candidate" is used in Form-B. To read the amended Form-B in the manner required by the petitioners, will amount to rewriting the provisions of Section 30(b) and (c) and 36(2)(b) and 36(5) of RP Act. The amendment to the Symbol Order and Form-B, no way change the position that all nomination papers, without exception, shall be scrutinised on the day appointed for scrutiny and acceptance/rejection.

27. It should be remembered that, as repeatedly pointed out by the Supreme Court, that there is no right to be elected, outside the statute. It is not a fundamental right, nor common law right. A person can contest the elections only in accordance with the provisions of law and not otherwise [ see decisions in

Charanlal Sahu Vs. Nandkishore Bhatt (AIR 1973 SC 2464) and Joyti Basu Vs. Debi Ghosal (AIR 1982 SC 983)].

28. The essence and effect of the provisions is made clear in the Hand Book for Returning Officer for the elections to the House of People and State Legislative Assemblies (1998). Chapter-VI of the Hand Book deals with scrutiny of Nomination papers. Para (4) requires that all nomination papers should be scrutinised. In view of the change in law, permitting the nomination paper of a candidate set up by a recognised national political party, to be subscribed by only one elector as proposer and other candidates by ten electors as proposers, certain clarifications were issued by the Election Commission regarding the candidate set up by a recognised national political party. The following clarifications contained in Para 10(3) of Chapter VI of the Hand Book are relevant :

"(i) Nomination paper filed by a candidate claiming to have been set up by a recognised National or State Party will be rejected, if a notice in writing to that effect has not been delivered to the Returning Officer of the constituency. . . . . by an authorized officer bearer of the political party by 3.00 p.m. ON THE LAST DATE FOR MAKING NOMINATIONS [IN FORMS 'A' AND 'B' devised by the Commission for the purpose under para 13 of the Election Symbols (Reservation and Allotment) Order 1968 ].

xxx                      xxx                      xxx                      xxx

(vii) The nomination paper of substitute candidate of a recognised political party will be rejected if the nomination paper of the main approved candidate of that recognised political party is accepted. However, if such substitute candidate has also filed another nomination paper subscribed by ten electors as proposers, this latter nomination paper will be scrutinised independently by treating the candidate as an independent candidate. Further, if the nomination paper of the main approved candidate of the party is rejected, then also the nomination paper of the substitute candidate will be accepted, provided that the party has intimated his name as its substitute candidate in Form 'A' and 'B' filed before 3 p.m. on the last date for making nominations."

(emphasis is supplied)

29. Clause (vii), extracted above, makes the effect of the three situations clear i.e. as to what should happen if the main approved candidate's nomination paper is accepted and what should happen if the main approved candidate's nomination paper is rejected

and as to what should happen if the substitute candidate files one nomination paper as a candidate set by a recognised political party with one proposer and another nomination paper subscribed by ten electors as proposers, as a candidate not set up by a recognised political party. This was approved and reiterated by the Supreme Court in Krishna Mohini Vs. Mohinder Nath Sofat [(2000) 1 SCC 145]. The Supreme Court extracted clarification No. (vii) from the Hand Book for Returning Officers (1998) [extracted above] and specifically stated that the aforesaid guidelines issued by the Election Commission of India are consistent with the statutory provisions and correctly brings out the position of law. The Supreme Court held that as follows :

"The distinction between nomination filed by a candidate set up by a recognised political party and a candidate not set up by a recognised political party is precise. A perusal of the first proviso to Sub-section (1) of Section 33 of the Act makes it clear that a candidate not set up by a recognised political party, meaning thereby a candidate set up by an unrecognized political party or an independent candidate, in order to be duly nominated for election must have his nomination paper subscribed by ten proposers being electors of the constituency. If such nomination paper be subscribed by only one elector as proposer or by a number of electors less than ten, then it will amount to noncompliance with the provisions of Section 33. A candidate, who is merely a substitute or a cover candidate set up by a recognised political party, may file his nomination paper proposed by only one elector or the constituency. If the nomination paper of the approved candidate of that political party is accepted, the nomination paper filed by the substitute or cover candidate shall be liable to be rejected because there can be only one candidate set up by a recognised political party."

[ emphasis supplied ]

Thus, a substitute candidate cannot take exception to the rejection of his nomination paper when the main approved candidate's nomination paper is accepted.

30. The learned counsel for the petitioners attempted to distinguish the clarification (vii) in the Hand Book for Returning Officers and the decision in Krishna Mohini's case, on the ground that they are based on the Symbol Order as it stood in the year 1998 and that they do not take note of the amendments to Form B under the Symbol Order. But, the amendment to Form B in no way affects the requirements of Sections 30(b) and (c) and 36(2) and (5) of the RP Act. The amendment merely clarifies

that substitute candidate will step-in the place of approved candidate in two circumstances instead of in one circumstance. But, they do not in any way affect or alter the legal position that only one candidate in the contest can be set up by a recognised political party and any extra candidate (either cover candidate or substitute candidate) gets excluded on the date of scrutiny, by rejection of his/her nomination paper as a consequence of acceptance of the nomination paper of the approved main candidate. This position will also be evident from a careful analysis of the provisions. If the contention of the petitioners is to be accepted and the nomination paper of substitute candidate is not rejected on the date of scrutiny, then the consequence will be very serious. The law does not contemplate rejection of nomination paper after the date prescribed for scrutiny and acceptance/rejection. If the substitute candidate is allowed to continue as a candidate, without scrutiny and rejection of his nomination paper, then on the date of withdrawal there will be technically two candidates set up by a recognised national political party; and if the approved main candidate set up by a recognised national political party refuses or fails to withdraw from the contest on the date stipulated for withdrawal of candidature, then there will be two candidates set up by a recognised national political party in the field. A substitute candidate being a candidate set up by a recognised national political party, will also be entitled to the symbol of the recognised political party, but the said symbol having already been allotted to the approved candidate, the same cannot be allotted to the substitute candidate. A substitute candidate cannot also be allotted another symbol, having regard to the bar contained in para 8 of the symbol Order which requires that a candidate set up by a recognised national political party should be allotted the symbol of that party and no other.

31. There will be another incongruous position, if both the approved main candidate and substitute candidates are accepted as validity nominated candidates and the approved main candidate does not subsequently withdraw from the contest. In that event, the approved main candidate would be the candidate of the recognised political party. Consequently, the substitute candidate cannot be considered as the candidate set up by a recognised national political party. If he is not the recognised national political party, then his nomination paper subscribed by one elector as proposer would become invalid. But his nomination paper cannot be rejected, as the last date for scrutiny and rejection of nomination papers has already expired. Thus, the only proper procedure is to scrutinise all nomination papers, including those of substitute candidates on the date fixed for scrutiny itself and not any other subsequent day; and if the nomination paper of the substitute

candidate is not valid on account of the acceptance of the approved main candidate's nomination, then reject the same on the date of scrutiny itself. Therefore, the procedure adopted by the Returning Officer and the decisions given by him rejecting the nomination paper of U.K. Swamy is valid and in accordance with law.

32. The petitioner in EP No. 7/1999 had made a request to let in oral evidence to show that there was an arrangement under which H.D. Kumaraswamy would have withdrawn on 21-8-1999, if his U.K. Swamy's nomination had not been rejected. This aspect has been considered in the order dated 30-6-2000, which is extracted below:

"3. The election Petition is filed solely on the ground that the nomination of the petitioner has been improperly rejected. According to the petitioner, the Returning Officer ought not to have rejected his nomination paper on the date fixed for scrutiny of nominations, but ought to have waited till the expiry of date for withdrawal of the nomination paper, and failure to do so amounted to improper rejection of the nomination paper. There is no allegation of any corrupt practice or allegations of the nature of corrupt practice, which may require oral evidence.

4. Learned Counsel for the respondents have no objection for the documents produced by the petitioner being marked by consent.

5. In the facts and circumstances of the case, oral evidence is not required. Parties are directed to mark the documents by consent and argue the matter."

33. The petitioners' success in the Election Petition depends on the question whether rejection of the nomination paper is correct or not. This is purely a legal question. Any arrangement among the members of a party is totally irrelevant. The Supreme Court in *SOMNATH RATH vs BIKRAM K. ARUKH* (2000) (1) UJ 64 held that improper rejection of nomination is itself sufficient to quash the election of returned candidate and there is no need for an enquiry as to material effect of such rejection on result of election, in case of improper rejection of nomination paper. Therefore the question of permitting petitioner in EP No. 7/1999 to let in evidence as to what would have happened if his nomination had not been rejected, does not arise.

34. The petitioner in EP No. 7/1999 contents that Section 86 and 98 contemplate trial in the case of all election petitions and therefore he sought to be permitted to examine witness. It can not be said that the term 'trial' in Section 86 and 98 requires

or contemplates examination of witnesses, even where the question arising for decision is a pure question of law or where there is no cause of action for the election petition. In *SAMAR SINGH vs KEDAR NATH* (AIR 1987 SC 1926) the Supreme Court has held that an election petition can be dismissed under Order 7 Rule 11 of CPC even after framing of issues, if the petition does not disclose a cause of action.

35. In view of above, I answer issues 1 and 2 in the negative.

RE: ISSUE-3 (in both cases):

36. The question whether the Returning Officer is a necessary party is covered by the decision of the Supreme Court in *JYOTI BASU vs DEBI GHOSAL* [AIR 1982 SC 983] and *B. SUNDARA RANI REDDY vs ELECTION COMMISSION OF INDIA* [1991 (SUPP) (2) SCC 624] and the decision of this court in *SUBHAN KHAN vs J H PATEL* [AIR, 1996 KAR 167]. Therefore, it is held that the Returning Officer is not a necessary party. However as the arguments have been heard on all the issue including this preliminary issue without recording any oral evidence, this question in these cases is academic.

RE: ISSUE No (5) IN EP No 23/1999:

37. This issue is answered while considering the issues 1 and 2. Nomination paper of a substitute candidate belonging to a recognised political party subscribed by only one elector as proposer will have to be rejected, if the nomination paper of the main approved candidate is accepted. On the other hand, if the nomination paper of the approved main candidate is rejected, on scrutiny, or where the approved main candidate withdraws before the nomination paper of the substitute candidate is scrutinised, then the substitute candidate becomes the approved main candidate and his nomination will be valid, even if it is subscribed by a single proposer.

RE: ISSUE (4) IN BOTH CASES:

38. Issue No. 4 in both cases is a consequential issue. If the rejection of nomination paper of U.K. Swamy was improper, then the election of the returned candidate had to be declared as void under Section 100(1)(d) of the RP Act. In these cases, issues (1) and (2) have been answered holding that the rejection of the nomination paper of U. K. Swamy is valid, Consequently, issue No. (4) in both cases is answered in the negative.

CONCLUSION:

39. There is no merit in these election petitions. In fact there is no cause of action at all. The petitions are accordingly dismissed under Section 98(a) of RP Act. The returned candidate (respondent)

No. 2 in EP No. 7/1999 and Respondent No. 1 in EP No. 23/1999) will be entitled to costs from the petitioner in the respective petition under Section 119 of RP Act, quantified at Rs. 1,000/- per petition.

Sd/- JUDGE

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

ELECTION PETITION NOS. 7 & 23 of 1999

In EP No. 7 of 1999

Between:

1. U.K. Swamy  
S/o Kadegowda, age 49 years  
Uyyamballi Hobli  
Kanakapura Taluk  
Bangalore Rural District —PETITIONER

(By Sri M. Veerabhadraiah & Sri M. R. Rajgopal)

And :

1. The Returning Officer/Deputy Commissioner,  
No. 11, Kanakapura Parliamentary Constituency  
Podium Block, Vishweswaraiiah Towers,  
Vidhana Veedhi, Bangalore.

2. Shri M.V. Chandrashekar Murthy,  
S/o M.V. Venkatappa, aged 58 years.  
Parliamentary Constituency,  
R/o Pete Malavalli Town,  
Mandya District, Also at  
M.V. Chandrashekar Murthy,  
Member of Parliament,  
No. 5, Church Road, Shantinagar,  
Bangalore.

...RESPONDENTS

(By Sri H.J. Sundarkumar, AGA, for R1;  
Sri Venkateshwar N.K. and Ms. Madhumita Bagchi, Advocate for R2.)

Election petition is filed under Sections 81 of The Representation of People Act, 1951, by the Petitioner Candidate for Election Constituency as Member of Parliament for No. 11, Kanakapura Parliamentary Constituency held on 5th September 1999 praying as follows:

(a) Call for records, pertaining to pre-election process i.e., from the date of declaration of calendar of events, till the date of rejection of nomination of petitioner pertaining to No.11, Kanakapura Parliamentary Constituency;

(b) Call for other records relating to granting of copies, certified copies to petitioner, including original file containing the orders, endorsements and notes if any, from the custody of returning officer, and

(c) Declare that rejection of nomination paper of the petitioner is improper and illegal, pertaining to No. 11, Kanakapura Parliamentary Constituency and consequently declare the election of second respondent as declared under Form No. 21C, as null and void.

E.P. No. 23 of 1999

Between:

1. Shankare Gowda,  
S/o Puttaswamygowda, age 35 years.  
R/o Mylanayakana Hosahalli,  
Chennapatna Taluk,  
Bangalore Rural District —PETITIONER

(By Sri K.N. Subba Reddy, Advocate)

And:

1. M.V. Chandrashekhara Murthy,  
S/o M.V. Venkatappa, age 58 years  
R/o Petemalavalli, Mandya,  
and also No. 5, Church Road,  
Shanthinagar, Bangalore-37.
2. U.K. Swamy,  
S/o Kadegowda, age 49 years,  
R/o Uyyamballi Village,  
Alahalli Post, Kanakapura Taluk,  
Bangalore, Rural District.
3. H.D. Kumaraswamy,  
S/o H.D. Devegowda, age 38 years,  
R/o No. 286, Mini Forest Road,  
2nd main, J.P. Nagar, III Phase,  
Bangalore.
4. M. Srinivas,  
S/o Muniswamappa, age 58 years,  
R/o No. 8, 4th Cross, 7th Block,  
Jayanagar, Bangalore
5. Bramhananda,  
S/o. U. Nagaish, age 32 years,  
R/o No. 158, Koramangala Village,  
Bangalore-95.
6. Veerappa,  
S/o Guddathimmaiah,  
age 55 years, r/o No. 13,  
Kallipalya, Maligondanahalli Dhakale,  
Uduru Hobli, Magadi Taluk,  
Bangalore, Rural District.
7. The Returning Officer & Deputy Commissioner  
Bangalore Rural to No. 11, Kanakapura  
Lok Sabha Constituency, Rodium Block,  
Bangalore

—RESPONDENTS

(By Sri Venkateshwar N.K. & Ms. Madhumita Bagchi Advs., for ER1, Sri M. Veerabhadraiah and M.R. Rajagopal, Advs., for R2, Sri D.L. Jagadeesh, Adv., for R3, Sri H.J. Sundarkumar, AGA, for R-7, R4 to R6 served and unrepresented)

Election Petition filed on 20-11-1999 under Sections 80 and 81 of the Representation of People Act, 1951, by the petitioner through his advocate Sri K.N. Subba Reddy, praying as follows :

(a) To call for records pertaining to the election process i.e., from the date of declaration of calendar of events till the date of rejection of Nomination of respondent No. 2 pertaining to No. 11, Kanakapura Parliamentary Constituency, Kanakapura, Bangalore Rural District, State of Karnataka.

(b) To call for other records including original file containing the orders, endorsements, notices, B-Forms, nomination paper of respondent No. 2, if any in the custody of the returning officer for the said constituency; and

(c) Declare that the rejection of nomination of respondent 2 pertaining to the said constituency as improper and illegal and consequently declare that the election of first respondent as returned candidate to the said constituency as null and void.

These two Election Petitions coming up for arguments between 28-7-2000 and 15-9-2000 and for pronouncement of orders on 22-9-2000 in the presence of Sri M. Veerabhadraiah and Sri M.R. Rajagopal, advocates for petitioner and Sri H.J. Sundarkumar, AGA, for R1, Sri Venkateshwar N. K. and Ms. Madhumita Bagchi, advocates for R2 in E.P. 7/99 and Sri K.N. Subbareddy advocate for petitioner and Sri Venkateshwar N.K., Ms. Madhumita Bagchi, Advocates for R1, and Sri M. Veerabhadraiah and Sri M.R. Rajgopal, advocates for R2, and D.L. Jagadeesh, advocate for R3, Sri H.J. Sundarkumar, AGA, for R7 and respondents 4 to 6 are served but remain unrepresented in E.P. 23/1999 and for the reasons stated in the order, it is ordered and decreed that the Election Petitions be and the same are hereby dismissed with costs.

And it is further ordered and decreed that the returned candidate (Respondent No. 2 in E.P. 7/99 and respondent No. 1 in E.P. 23/99) will be entitled to costs from the petitioners in the respective petition under section 119 of the Representation of People Act 1951, quantified at Rs. 1000/- per petition.

Dated 16-6-2001

Sd/-  
Registrar (Judicial)  
[No. 82/KT-IIP/7&23/99/2001]

By Order,  
BABU RAM, Secy.

## आदेश

नई दिल्ली, 7 अगस्त, 2001

आ.अ. 108.—यतः निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथाविनिर्दिष्ट दिल्ली राष्ट्रीय राजधानी राज्य-क्षेत्र की विधान सभा के साधारण निर्वाचन के लिए जो स्तम्भ (3) में विनिर्दिष्ट निर्वाचन क्षेत्र से हुआ है स्तम्भ (4) में उसके सामने विनिर्दिष्ट निर्वाचन लड़ने वाले प्रत्येक अभ्यर्थी लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्वर्धन बनाए गए नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ, (5) में यथा दर्शित अपने निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहा है ;

और यतः उक्त अभ्यर्थियों ने सम्यक् सूचना दिए जाने पर भी उक्त असफलता के लिए या तो कोई कारण अथवा स्पष्टीकरण नहीं दिया है या उनके द्वारा दिए गए अभ्यावेदनों पर, यदि कोई हो, विचार करने के पश्चात् निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या व्याख्यान नहीं है ;

अतः अब, निर्वाचन आयोग एतद्वारा उक्त अधिनियम की धारा 10-क के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन के या किसी राज्य/संघ राज्य-क्षेत्र की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष की कालावधि के लिए निरहित घोषित करता है।

## सारणी

क्र. सं.	निर्वाचन का विवरण	विधान सभा निर्वाचन क्षेत्र की क्रम संख्या और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम और पता	निरहता का कारण
1	2	3	4	5
1.	दिल्ली राष्ट्रीय राजधानी राज्य-क्षेत्र के लिए साधारण निर्वाचन 1998	9-हौज खास	श्री सीता राम भारद्वाज, 146, सावित्री नगर, नई दिल्ली।	निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे।
2.	—वही—	26-विष्णु गार्डन	श्री शिव शंकर, ए-841, जे. जे. कालोनी, ख्याला, नई दिल्ली।	—वही—

[सं. 76/दिल्ली-वि.स./99 (13)]

आदेश से,  
के. आर. प्रसाद, सचिव

## ORDER

New Delhi, the 7th August, 2001

O.N. 108.—Whereas, the Election Commission is thus satisfied that each of the contesting candidate specified in column (4) of the Table below at the election specified in column (2) held from the constituency specified in column (3) against his name has failed to lodge an account of his election expenses as required by the Representation of the People Act, 1951 and Rules and Orders made thereunder as shown in column (5) of the said Table; and

Whereas, the said candidates have not furnished any reason or explanation for the said failure even after due notice and the Election Commission is thus satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of Section 10A of the Representation of the People Act, 1951, the Election Commission hereby declares the said persons specified in column (4) of the Table below to be disqualified for being chosen as, and for being a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State for a period of three years from the date of this order.



TABLE

Sl. No.	Particulars of elections	No. & Name of A.C.	Name & Address of contesting candidates	Reason for disqualification
1	2	3	4	5
1.	General election to Legislative Assembly-1998.	9 Hauz Khas	Sh. Sita Ram Bhardwaj, 146, Savitri Nagar, New Delhi.	Failed to lodge any account of election expenses
2.	-do-	26-Vishnu Garden	Sh. Shiv Shankar, A-841, J.J. Colony, Khayala, New Delhi.	-do-

[No. 76/DL-LA/99(13)]

By order,

K. R. PRASAD, Secy.

आदेश .

नई दिल्ली, 7 अगस्त, 2001

आ.अ. 109.—निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथा विनिर्दिष्ट गुजरात विधान सभा के उप-निर्वाचन के लिए जो स्तम्भ (3) में विनिर्दिष्ट निर्वाचन-क्षेत्र में हुआ है स्तम्भ (4) में उनके सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्विनिर्दिष्ट बनाए गए नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ (5) में यथा दक्षित निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहा है ;

और उक्त अभ्यर्थियों ने सम्यक् सूचना दिए जाने पर भी उक्त असफलता के लिए या तो कोई कारण अथवा स्पष्टीकरण नहीं दिया है या उनके द्वारा दिए गए अभावों पर यदि कोई हो, विचार करने के पश्चात् निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त अयोग्यता के लिए कोई पर्याप्त कारण या न्यायोचित्य नहीं है ;

अतः अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-क के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों को संसद के किसी भी सदन के या किसी राज्य/संघ राज्य-क्षेत्र की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और हटा के लिए इस प्रादेश को ताराख से तान बंध की कालावधि के लिए निरहित घोषित करता है :—

## सारणी

क्र. सं.	निर्वाचन का विवरण	निर्वाचन-क्षेत्र की क्र. सं. और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम और पता	निरर्हता का कारण
1	2	3	4	5
1.	विधान सभा के लिए उप-निर्वाचन, 2000	139—भादगन	पटेल शैलेशभाई रामभाई, पो. आ. भादगन, ता. बोरसाद गुजरात।	कोई भी लेखा दाखिल नहीं किया।
2.	—वही—	—वही—	परमार प्रवीणभाई ताटुभाई, पो. आ. भादगन, बांकर बास, ता. बोरसाद, गुजरात।	—वही—

[सं. 76/गुज./2001/क, अनु.-1]

प्रादेश से,

सी. आर. ब्रह्मभट्ट, सचिव

## ORDER

New Delhi, the 7th August, 2001

O.N. 109.—Whereas, the Election Commission of India is satisfied that each of the contesting candidate specified in column 4 of the Table below at the Bye-Election to the Legislative Assembly in Gujarat State specified in column 2 and held from the constituency specified in column 3 against his name has failed to lodge the account of his election expenses as shown in column 5 of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And whereas, the said candidate has either not furnished any reason or explanation for the said failure even after due notice by the Election Commission, or after considering the representation made by them, if any, the Election Commission is satisfied that he has no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the persons specified in column 4 of the Table below to be disqualified for being chosen as and for being a member of either House of Parliament or the Legislative Assembly or Legislative Council of a State or Union Territory for a period of three years from the date of this order :—

TABLE

Sl. No.	Particulars of Election	S.No. & Name of Assembly Constituency	Name & Address of Contesting Candidates	Reasons for disqualification
1	2	3	4	5
1.	Bye Election to the Legislative Assembly, 2000	139-Bhadran	Patel Shaileshbhai Rambhai, P.O. Bhadran, Ta. Borsad, Gujarat.	Account not lodged
2.	-do-	-do-	Parmar Pravinbhai Natubhai, P.O. Bhadran, Vankar Vas Ta. Borsad, Gujarat	-do-

[No. 76/GJ/2001/W.S.I.]

By Order,

C. R. BRAHMAM, Secy.